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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,369	11/06/2003	Marc S. Gorans	294.00170101	8480

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MINNEAPOLIS, MN 55458

EXAMINER
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VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/20/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/702,369

Applicant(s)

GORANS ET AL.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 8-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 and 23 is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-17 and 24-27 is/are rejected.
- 7) ☒ Claim(s) 14 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13, 15-17, 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,446,819 to Gourlandt in view of Netherlands Patent NL 8802812A to Meyn.

Regarding Claims 1, 19, 15 and 24, Gourlandt teaches a method of treating the beak of a bird, the method comprising: positioning a bird head in a bird head positioning device (Gourlandt Fig. 7 #30), wherein the bird head positioning device comprises first and second major sides (Gourlandt Fig. 7 side of #30 with bird's eye and side of #30 with just the point of the beak), and a beak receiving aperture formed through the first and second major sides of the bird head positioning device, wherein at least a portion of the lower beak of the bird head protrudes through the beak receiving aperture (Gourlandt Fig. 6 #56) and is exposed proximate the second major side of the bird head positioning device; inherently pressing inward on the throat of the bird **proximate** the base of the lower beak wherein the pressing is directed towards the tongue of the bird using a tongue control protrusion in the bird head positioning device (Gourlandt Col. 4 line 51-59); debeaking and burning the beak at the second major surface of the bird head positioning device, wherein the beak exposed proximate the second major side of

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the bird head positioning device while pressing inward on the throat of the bird (Gourlandt teaches the head is immobilized in the head restraint and thus the head is pressed inward to maintain the immobile position in the head device); teaches that either the top or bottom or both beaks can be treated (Gourlandt Col. 5 line 52-55). Gourlandt teaches the surface defining the beak receiving aperture extends between the first and second major sides of the bird head positioning device (Gourlandt Fig. 7 surface of aperture in #7 extends between the side with the head and the side with the beak).

Gourlandt is silent on emitting energy from a non-contact energy source.

However, Meyn teaches the same type of treatment utilizing a known alternate energy source (Meyn #5 laser). It would have been obvious to one of ordinary skill in the art to modify the teachings of Gourlandt with the teachings Meyn of at the time of the invention since the modification is merely an engineering design choice involving the selection of a known alternate equivalent treatment source (i.e. mechanical versus laser) for the advantage of a more precise and cleaner cut and to reduce the likelihood of transmitting disease from one bird to another.

Gourlandt as modified teaches a tongue control protrusion positioned in the beak receiving apertures (Gourlandt Fig. 7 #62), but is silent on explicitly teaching that the tongue control protrusion is protruding from a surface defining the beak receiving aperture in the bird head positioning device. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Gourlandt at the time of the invention since the modification is merely eliminating an element and its function [In

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re Larson 340 F.2d 965, 144 USPQ 347 (CCPA 1965) and In re Kuhle 526 F.2d 553, 188 USPQ 7 (CCPA 1975)]. Elimination of an element and its function when that function is not desired is an obvious modification. In instances when it is desirable to manually hold the poultry in place it is not necessary to have the spring activated features (Gourlandt #84, 66, 74) and is desirable to merely have the known tongue control protrusion in place secured to the surface of the beak receiving aperture performing the same intended function of controlling the poultry tongue i.e. merely shifting the attachment point of the tongue control protrusion for manual operation is an obvious modification for one of ordinary skill in the art [In re Japikse, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)].

Regarding Claim 2, Gourlandt as modified teaches the pressing is performed while the bird head is positioned in the bird head positioning device (Gourlandt teaches the bird is inserted and suspended in the device thus it is inherently pressed on by first the hand inserting it and then by element #66).

Regarding Claim 3, Gourlandt as modified teaches the pressing is performed after the bird head is positioned in the bird head positioning device (Gourlandt #66).

Regarding Claims 4 and 5, Gourlandt as modified is silent on adjusting a force used to perform the pressing or limiting a force used to perform the pressing. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Gourlandt at the time of the invention to prevent from causing injury to the bird and based on the size of the bird.

Regarding Claims 6, 11 and 25, Gourlandt teaches the bird head positioning device comprises a tongue control protrusion, wherein the tongue control protrusion presses into the throat of the bird proximate the base of the lower beak (Gourlandt Col. 4 line 51-59, element #62 is inserted in the mouth of the bird and is thus inherently functions as a tongue control that press into the throat, once again applicant has merely claimed "proximate" the lower beak and element #62 can extend across #21 to press on the throat under the head).

Regarding Claim 7, Gourlandt as modified is silent on adjusting a force used to perform the pressing or limiting a force used to perform the pressing. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Gourlandt at the time of the invention to prevent from causing injury to the bird and based on the size of the bird.

Regarding Claims 8 and 15, Gourlandt as modified teaches the tongue control protrusion extends into the beak receiving aperture (Gourlandt Fig. 6 and Col. 4 line 51-59 and Fig. 7 illustrates element #62 inside of the aperture in element #30).

Regarding Claims 9, 13 and 17, Gourlandt as modified is silent on explicitly teaching adjusting a distance by which the tongue control protrusion extends into the beak receiving aperture. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Gourlandt at the time of the invention since the modification is merely making something adjustable while performing the same intended function, modified to accommodate different size birds. Making something adjustable

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does not present a patentably distinct limitation [*In re Stevens*, 212 F.2d 197, 198, 101 USPQ 284, 285 (CCPA 1954)].

Regarding Claims 10, 12, 16, 20 and 21, Gourlandt as modified teaches the tongue control protrusion extends into the beak receiving aperture and is fixedly mounted (Gourlandt Fig. 6 #62).

#### ***Allowable Subject Matter***

Claims 22 and 23 are allowed.

Claims 14 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed 05 March 2007 have been fully considered but they are not persuasive.

Gourlandt as modified teaches a tongue control protrusion positioned in the beak receiving apertures (Gourlandt Fig. 7 #62), but is silent on explicitly teaching that the tongue control protrusion is protruding from a surface defining the beak receiving aperture in the bird head positioning device. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Gourlandt at the time of the invention since the modification is merely eliminating an element and its function [*In re Larson* 340 F.2d 965, 144 USPQ 347 (CCPA 1965) and *In re Kuhle* 526 F.2d 553, 188 USPQ 7 (CCPA 1975)]. Elimination of an element and its function when that function is not desired is an obvious modification. In instances when it is desirable to

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manually hold the poultry in place it is not necessary to have the spring activated features (Gourlandt #84, 66, 74) and is desirable to merely have the known tongue control protrusion in place secured to the surface of the beak receiving aperture performing the same intended function of controlling the poultry tongue i.e. merely shifting the attachment point of the tongue control protrusion for manual operation is an obvious modification for one of ordinary skill in the art [In re Japikse, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)].

Applicant has not claimed that the protrusion is directly protruding from the surface of the bird head positioning device, applicant has not structurally defined the features of the head positioning device and the relationship to the protrusion i.e. the protrusion directly protrudes from the surface of the second major side of the bird head positioning device that is positioned under the lower beak of the bird etc. Furthermore, Gourlandt teaches a tongue control protrusion that is either positioned in the bird's mouth or under the lower portion of the bird's head towards the throat (Gourlandt Col. 4 line 51-59). Thus, the concept of a protrusion in relation to a bird head receiving aperture is known and merely shifting the location of a known element that performs the same intended function is an obvious modification for one of ordinary skill in the art.

Gourlandt explicitly teaches that it is known to use a tongue control protrusion in the beak receiving aperture that presses into the throat of a bird proximate to the lower beak. Merely making the tongue protrusion integral with the aperture is an obvious modification for one of ordinary skill in the art since the device continues to perform the same intended function of controlling the tongue.




**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Andrea M. Valenti  
Primary Examiner  
Art Unit 3643

17 April 2007